IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 149 of 2004

Date of decision: 8th August, 2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 149 of 2004

1. Smt. Somshri Jain W/o Sri Raj Kumar Jain.
2. Raj Kumar Jain S/o Sri Mansumarat Das Jain,
   Both R/o 347 Omkar Road,
   Dehradun. …… Appellants

Versus

1. Motor Accident Claims Tribunal /
   Addl. District Judge / 7th Fast Track Court,
   Dehradun.
2. Mohan Lal Naithani S/o Sri Govind Ram Naithani,
   R/o Mata Mandir Colony, 5/152, Ajabpur Kalan,
   District Dehradun
   (owner of Tata Sumo No. UP-07/L-9614).
3. Trilok Singh Rawat S/o Sri D.C. Rawat,
   R/o Race Course, Dehradun
   (Driver of Tata Sumo No. UP-07/L-9614).
4. The New India Assurance Co. Ltd.,
   25-A Rajpur Road, Dehradun,
   Through its Regional Manager
   (Insurer of Tata Sumo No. UP-07/L-9614).
5. Kewal Krishna Sethi S/o Sri Nand Lal Sethi,
   R/o 71/4 Bakralwala, Dehradun
   (Owner of Motor Cycle No. UP-07/K-7789).
6. National Insurance Co. Ltd.,
   Inderlok Hotel, Anekant Palace,
   Rajpur Road, Dehradun,
   Through its Regional Manager
   (Insurer of Motor Cycle No. UP-07/K-7789).

…….. Respondents

Mr. Ramji Srivastava, Advocate for the appellants.
None for respondents Nos. 1, 2, 3 & 5.
Mr. T.A. Khan, Advocate for respondent No.4.
Mr. Prabhat Pandey, Advocate for respondent No.6.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

The unfortunate parents of deceased Chirag Jain are the appellants in this appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge / 7th F.T.C.,

Dehradun vide Award dated 30.01.2004 passed in M.A.C.T. Case No. 248 of 2001.

2. The claimants claimed compensation of Rs. 18,00,000/- for the death of their son Chirag Jain in the motor accident on 29.06.2001 when the motorcycle bearing registration No. UP08-K-7789, on which he was travelling as a pillion-rider, was dashed by the offending vehicle Tata Sumo bearing registration No. UP07-L-9614 resulting in serious injuries motorcyclist Aman Sethi and pillion-rider Chirag Jain resulting in the death of both of them later in the hospital. The claimants pleaded that their son Chirag Jain used to earn Rs. 6,500/- per month by running a Canteen in Doon School, Dehradun.

3. The owner, driver and insurer of the offending vehicle Tata Sumo contested the claim and denied their liability to pay compensation on the ground that the motorcyclist, himself, was negligent and as such, was responsible for the accident. The owner and insurer of the motorcycle, on the other hand, attributed negligence resulting in the accident to the driver of the offending vehicle Tata Sumo.

4. The Tribunal, on the evidence led by the parties, held that the claimants' son Chirag Jain sustained injuries in the motor accident on 29.06.2001 and succumbed to those injuries on 03.07.2001 in the hospital; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Tata Sumo; and the insurer of Tata Sumo was liable to pay compensation to the claimants.

5. As the Tribunal did not find the evidence led by the claimants about the income of the deceased reliable, his income was assessed at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act. By deducting 1/3rd of the said amount as personal expenses of

the deceased, the claimants' dependency was assessed at Rs. 10,000/- per annum. Considering that the claimants were parents of the deceased and were aged about 51 years and 56 years respectively, the Tribunal selected the multiplier of '10'. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of 10, the compensation was worked out to Rs. 1,00,000/-. The Tribunal awarded further sum of Rs. 25,000/- under other heads. Thus, a total sum of Rs. 1,25,000/- was awarded as compensation to the claimants for the death of their son Chirag Jain in the motor accident.

6. Mr. Ramji Srivastava, the learned counsel for the appellants vehemently argued that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased; in assessing the income of the deceased at Rs. 15,000/- per annum on the basis of the notional income; in selecting the lower multiplier of '10' only though the deceased was 21 years of age on the date of the accident; and in not awarding any amount towards Medical Expenses incurred by the claimants on the treatment of their son Chirag Jain.

7. Mr. T.A. Khan, the learned counsel for respondent No. 4 the insurer of the offending vehicle Tata Sumo, on the other hand, supported the Award and submitted that as the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal was left with no other option but to assess the income of the deceased on the basis of the notional income.

8. The findings recorded by the Tribunal that deceased Chirag Jain sustained injuries in the accident on 29.06.2001 and succumbed to those injuries on 03.07.2001 and the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Tata Sumo have, now, attained finality, as the respondents have not filed any appeal against the Award.

9. True, the claimants pleaded in the claim petition that their son Chirag Jain used to earn Rs. 6,500/- per month by running a Canteen in Doon School, but no reliable evidence was led by the claimants in that behalf. No documentary evidence was produced before the Tribunal to establish that the deceased in fact was running a Canteen in the School. Admittedly, Chirag Jain was regular student of B.Com. (II) in DAV College, Dehradun. In this state of evidence, it is difficult to hold that he was running a Canteen in Doon School and was earning Rs. 6,500/- per month. We, therefore, do not find any fault with the assessment of the income of the deceased by the Tribunal on the basis of the notional income of Rs. 15,000/- per annum.

10. The selection of multiplier of '10' by the Tribunal, too, cannot be found fault with in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in (**2003**) **8 SCC 731,** wherein it has been held that in a case where the parents of the deceased are the claimants, the multiplier of '10' is appropriate.

11. Admittedly no bills or vouchers or receipts were produced before the Tribunal to establish that any amount, and if so how much, was spent by the claimants on the treatment of their son Chirag Jain. In the absence of cogent and reliable evidence to establish the medical expenses, the Tribunal could not have granted any amount in that behalf.

12. It has come in the evidence of claimant No.2 Raj Kumar Jain that he is earning Rs. 1,00,000/- (Rupees One Lakh only) per annum from his medical store. It is, thus, apparent that claimant No. 1 Smt. Somshri Jain was dependent on her husband Raj Kumar Jain rather than on her son deceased Chirag Jain. The compensation of Rs. 1,25,000/- granted by the Tribunal to the claimants, therefore, cannot be termed as 'inadequate'.

13. For the foregoing reasons, we do not find any scope for enhancement of the compensation awarded by the Tribunal.

14. The appeal, therefore, fails and is hereby dismissed.

15. No order as to costs.

(Prafulla C. Pant, J.) 08.08.2006

(Rajeev Gupta, C. J.) 08.08.2006

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